

SPECIAL PROCESSING SUBMISSION

Petition sent to Central Facsimile Number per Updated Notice of Centralized Delivery and Facsimile Transmission Policy for Patent Related Correspondence, and Exceptions Therein (signed 02Mar2005)

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CENTRAL FAX CENTER SD-6785/S-96,438
Patent Application
JUN 28 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/805,640
Applicants : Swiler, et al.
Filed : March 13, 2001
TC/A.U. : 2132
Examiner : K. Zand
For : METHOD AND TOOL FOR NETWORK VULNERABILITY ANALYSIS

Petition to the Director of the USPTO Pursuant to 37 C.F.R. 1.181
To Invoke Supervisory Authority

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia
22313-1450

Sir:

Introductory Comments

This petition is filed in accordance with 37 C.F.R. 1.181(a)(3) following the action by the Director, Technology Center 2100, in withdrawing the above-identified application from issue following payment of the issue fee by the Applicants. Applicants request that the Director of the USPTO invoke supervisory authority to rescind the NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b) ("NOTICE") mailed June 22, 2005, and restore the application to the process to undergo issue. The basis for this petition, as set forth in more detail below, is that the ground stated in the NOTICE is an improper basis for withdrawal of the case from issue.

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For the convenience of the Office, a photocopy of the NOTICE is attached to this Petition.

Statement of Facts

1. This case was filed in the USPTO on March 13, 2001.
2. On September 23, 2004, the Office mailed an Office Action stating claim rejections.
3. Following Applicants' response to the September 23, 2004, Office Action, the Office issued a Notice of Allowability on May 26, 2005, stating that all of the claims were allowed and indicating that the drawings filed were acceptable.
4. In the Notice of Allowability, the Examiner stated, "Applicant's arguments filed 03/29/2005 have been fully considered and they are persuasive."
5. On June 6, 2005, Applicants paid the issue fee by filing their Fee Transmittal Form authorizing the Director to withdraw from Deposit Account No. 10-0131 the required fees.
6. Then, on June 22, 2005, the Office mailed the NOTICE which states: "The above-identified application is withdrawn from issue after payment of the issue fee to **determine patentability**. See 37 CFR 1.212(b)(1)." (Emphasis added.)

Point to Be Reviewed

The reason stated in the NOTICE is insufficient grounds for the Office, on its own initiative, to withdraw the case from issue. The stated reason, to **determine patentability**, is not among the permissible reasons set forth in 37 CFR 1.313 (b). The fact that the NOTICE also makes reference to 37 CFR 1.313(b)(1) [mistake on the part of the Office] does not overcome the

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fact that the Office may not, on its own initiative, choose to withdraw the application from issuance to revisit its earlier findings or make a subsequent determination in regards to patentability. Indeed, M.P.E.P. Section 1308, Subsection II specifically states, " Examples of reasons that do not warrant withdrawing an application from issue after payment of the issue fee at the initiative of the Office are: . . . (B) to permit the examiner to consider whether one or more claims are unpatentable. . . "

Action Requested

Applicants request that the NOTICE be rescinded as being improper under 37 CFR 1.313 and MPEP 1308. Applicants further request that this case be permitted to issue consistent with the Notice of Allowability mailed May 26, 2005 and Applicants' payment of the Issue Fee in accordance with applicable rules.

Petition Fee

If the Office should determine that any fees are due, please charge Sandia Corpora-

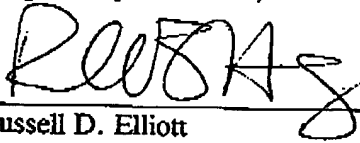
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tion from Deposit Account No. 10-0131.

Respectfully submitted,



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CERTIFICATE OF FACSIMILE TRANSMISSION (37 CFR 1.8(a))

I hereby certify that the foregoing paper (along with any paper referred to as being attached or enclosed) is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) 872-9306 on the date shown below.

Date: 6/28/05



Russell D. Elliott

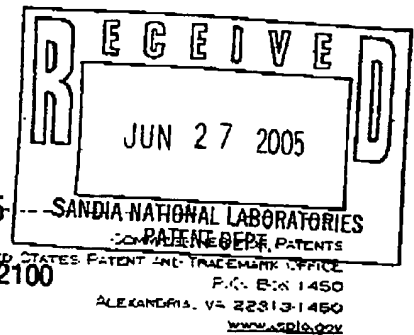


UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

JUN 22 2005

Technology Center 2100



SANDIA CORPORATION
P.O. BOX 5800
MS-0161
ALBUQUERQUE, NM 87185-0161

NOTICE OF WITHDRAWAL

FROM ISSUE
UNDER 37 CFR 1.313(b)

In re Application of
LAURA PAINTON SWILER
Application No. 09/805,640
Filed: March 13, 2001
Attorney Docket No. SD6528S93789

For: METHOD AND TOOL FOR NETWORK VULNERABILITY ANALYSIS

The above-identified application is withdrawn from issue after payment of the issue fee to determine patentability. See 37 CFR 1.313(b)(1).

The above-identified application is hereby withdrawn from issue.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to Paul Sewell 571-272-0800.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Paul Sewell
Director, Technology Center 2100
Computer Architecture, Software
And Electronic Commerce